

Article 3.O:

FP-O, Floodplain Overlay District

Article 3.O:**FP-O, Floodplain Overlay District****A. Purpose and Intent**

The FP-O District is established in both sympathy and harmony with the Chesapeake Bay Regulations to protect those areas of the Town which are subject to periodic inundation from flood waters. The application of this district is intended to protect natural water courses, rivers, stream valleys, marshes, forest cover in watershed lowlands, manmade drainage channels and overland drainage areas which are impacted by the 100-year floodplain.

The FP-O District provides development regulations with the objectives of (1) maintaining community safety from minor and major floods, (2) protecting the community against loss of life, health and property from floods and related dangers, (3) to preserve and protect floodplains and (4) to require appropriate construction practices to minimize flood damage. Further, it is the objective of this district to encourage well-planned development within watersheds wherein FP-O Districts are located in order that planned land uses will not exacerbate storm runoff quantities, velocities and water quality in the FP-O impact area.

In addition, the purpose of these provisions is to prevent the loss life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief and the impairment of the tax base by:

1. Permitted uses, activities and development which, alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies;
2. Restricting or prohibiting certain uses, activities and development from locating within areas subject to flooding;
3. Requiring all those uses, activities and developments that do occur in flood-prone areas to be protected and/or flood-proofed against flooding and flood damage;
4. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards;

5. Adhering to the tenets of the Chesapeake Bay Protection Regulations with respect to water quality protection and enhancements;

B. Application of the FP-O District

To enable the floodplain regulations to operate in harmony with the Comprehensive Plan's goals and objectives for existing land use, future development, the environment and population density, the FP-O District is created as an overlay district to be superimposed on other underlying conventional zoning districts and is to be so designated by special reference to the Official Zoning Map of the Town of Smithfield.

The land uses, housing types, minimum lot requirements, minimum yard requirements, maximum height and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which FP-O District is superimposed except as those other zoning district regulations may be modified by application of the regulations in the FP-O District.

Provisions of all other codes, ordinances and regulations shall be applicable insofar as they are consistent with the provisions of this article and the need of the Town to minimize the hazards and damage resulting from flooding. Where any term of this ordinance shall conflict with the Virginia Uniform Statewide Building Code in effect in Isle of Wight County, then the Virginia Uniform Statewide Building Code shall apply.

C. Compliance and Liability

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of this article and any other ordinances and regulations of the Town which apply to uses within the FP-O District.
2. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the flood plain area or that land uses permitted within such area, will be free from flooding or flood damages.
3. This ordinance shall not create liability on the part of the Town of Smithfield or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

D. FP-O District: General Regulations

1. **Description of FP-O District:** The FP-O District shall include areas subject to inundation by waters of the one hundred (100) year flood. The basis for the delineation of the district shall be the one hundred (100) year flood elevations or profiles contained in the Flood Insurance Study for the Town of Smithfield prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 4, 2002, as amended and subsequent revisions.
 - a. The Coastal Flood Plain District shall be that area of the one hundred (100) year flood plain subject to coastal flooding where one hundred (100) year tidal elevations have been provided in the Flood Insurance Study.
 - b. The Coastal High Hazard Area shall be that area of the one hundred (100) year flood plain that is subject to velocity waters, including hurricane wave wash, as defined in the Flood Insurance Study and as designated as "V" Zones on the Flood Insurance Rate Map.
 - c. It shall be prohibited to use fill for structural support in the Coastal High Hazard Area in accordance with to NFIP §60.3
 - d. It shall be prohibited to alter or change the dunes or mangrove stands which would increase potential criteria of NFIP 60.3(a)(5).
2. **Overlay district concept:** Any conflict between the provisions or requirements of the FP-O District and those of any underlying district the more restrictive provisions and/or those pertaining to the flood plain district shall apply. In the event any provision concerning a FP-O District is declared inapplicable as a result of any legislative or administrative action or judicial decision, the basic underlying provisions shall remain applicable.
3. **Relationship to Official Zoning Map:** The boundaries of the FP-O District are established as shown on the Flood Insurance Rate Map which is declared to be a part of this Ordinance and which shall be kept on file by the Planning and Zoning Administrator.
4. **FP-O District boundary changes:** The delineation any of the FP-O District may be revised by the Town Council of Smithfield where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency or an individual documents the

need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

5. **Interpretation of District Boundaries:** Initial interpretations of the boundaries of the Flood Plain District shall be made by the Planning and Zoning Administrator.

E. FP-O District: General Provisions and Administration

1. **Permit requirement:** All uses, activities and development occurring within the FP-O District shall be undertaken only upon the issuance of a zoning permit by the Planning and Zoning Administrator or an agent of the Planning and Zoning Administrator. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the Subdivision Regulations of the Town of Smithfield. Prior to the issuance of any such permit, the Zoning Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other drainage facility or system.
2. **Alteration or relocation of watercourse:** Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within the FP-O District, a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Marine Resources Commission, the Virginia State Water Control Board (a joint permit application is available from any one of these organizations). Notification of the proposal shall be given to all adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), the Chesapeake Bay Local Assistance Department, and the Federal Insurance Administration.
3. **Site plans and permit applications:** All applications for development in the FP-O District and all zoning and building permits issued for the flood plain shall incorporate the following information:
 - a. For structures to be elevated, the elevation of the lowest floor (including basement).
 - b. For structures to be flood-proofed (nonresidential only), the elevation to which the structure will be flood-proofed.
 - c. The elevation of the one hundred (100)-year flood.

- d. Topographic information showing existing and proposed ground elevations.
 - e. Certification by registered professional engineer or architect that floodproofing and anchoring methods meet watertight and structural load criteria in accordance with NFIP §60.3(c)(3).
 - f. Certification by registered professional engineer or architect that any fully enclosed area below lowest floor meet design criteria in accordance with NFIP §60.3(c)(5).
 - g. Certification by registered professional engineer or architect that piles, columns and structure can withstand simultaneous 100-yr wind and water loads.
 - h. Certification by registered professional engineer or architect that breakaway walls meet design criteria in accordance to NFIP §60.3(a)(5).
4. **Additional requirements for manufactured homes:** All manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely supported by engineered piers or other foundation system and is anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
5. **Recreational vehicles:** Recreational vehicles shall either:
- a. Be on the site for fewer than 180 consecutive days, and
 - b. Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions).

F. FP-O District Design Criteria for Public Infrastructure and Facilities

1. **Sanitary sewer facilities:** All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
2. **Water facilities:** All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.

3. **Storm drainage facilities:** All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites and shall be designed to prevent the discharge of excess run-off onto adjacent properties.
4. **Utilities:** All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas and should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
5. **Streets and sidewalks:** Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.
6. **Coastal High Hazard Area:** In the Coastal High Hazard Area, the following provisions apply in addition to those contained in this Ordinance and the Virginia Uniform Statewide Building Code:
 - a. All new construction shall be located landward of the reach of mean high tide.
 - b. The use of fill for structural support is prohibited. The use of slab or other at-grade foundation also is prohibited.

G. Variances in the FP-O District

1. The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for flood protection and other related matters.
2. Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in:
 - a. Unacceptable or prohibited increases in flood height.
 - b. Additional threats to public safety.
 - c. Extraordinary public expense and will not
 - d. Create nuisances, case fraud and/or victimization of the public, or conflict with local laws or ordinances.
3. Variances shall be issued only after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.

4. The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
5. In acting upon application for variances from the provisions of this article, in addition to the requirements elsewhere set forth in this Ordinance, the Board of Zoning Appeals shall consider the following additional factors:
 - a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept onto other lands or downstream to the injury of others.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

- j. The safety of access by ordinary and emergency vehicles to the property in time of flood.
- k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
- l. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- m. Such other factors which are relevant to the purposes of this ordinance.

H. Existing Structures in the FP-O District

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- 1. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any flood plain area to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or flood-proofed to the greatest extent possible.
- 2. The modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use, regardless of its location in a FP-O District, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this ordinance and the provisions of the Virginia Uniform Statewide Building Code.

I. Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this Ordinance are hereby declared to be severable.

J. Penalties

1. Any person who fails to comply with any of the requirements or provisions of this article and ordinance or directions of the Planning and Zoning Administrator of the Town of Smithfield shall be guilty of a Class 1 Misdemeanor.
2. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with this article shall not excuse the violation or noncompliance to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this article may be declared to be a public nuisance and adaptable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

K. Definitions for the FP-O District

For the purposes of this article and in addition to definitions in Article 13 of this ordinance, the following words and terms are hereby defined:

1. **Base Flood/One-Hundred Year Flood:** A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one (1) percent chance of occurring each year (recurrence interval), although the flood may occur in any year.)
2. **Development:** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations or storage of equipment or materials.
3. **Existing Manufacture Home Park/Subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the initial effective date of these regulations.
4. **Flood:** A general and temporary inundation of normally dry land areas.

5. **Flood-Prone Area:** Any land areas susceptible to being inundated by water from any source.
6. **Floodplain:** A floodplain may be defined as follows: (a) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation; or (b) an area subject to the unusual and rapid accumulation or run-off or surface water from any source.
7. **Historic Structures** Any structure that is individually listed as a landmark or contributing structure on the local inventory of historic places, Properties of Historic or Architectural Significance, within the Town of Smithfield Historic Preservation District and as delineated by the Town of Smithfield's Zoning Ordinance (Article 4, Section 14).
8. **Recreational Vehicle:** A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
9. **Start of Construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary floors; nor does it include the installation on the property of accessory building, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building.
10. **Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

11. **Substantial Improvement:** Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."